CF0000058596

50000-1-79 CrA 1172 94 (3)

APPEAL OF PRISONER

Division Bench (Crimin

No. 568 Name जोहर खान

Father's name नुरखान

Residence ग्राम - चांदर थाना नारायणपुर जिला - बस्तर Age 32 वर्ष

Sentenced to आजीवन on 12.7.94 ST No 298/92

Under section 302 भादवि. on by अपर सत्र न्याय. कांकेर

2 Counts (Sentences Concurrently)

it is explained to the prisoner that if he states he wishes to be represented be a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears either. If the legal practitioner does not appear with seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once wish the case and wil not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 12-7-94

2 Date of which copy received 14-7-94

3 Date on which Appeal sent 14-7-94

4 Whether the prisoner wishes to be represented or not yes/No.

No. 568. Name जोहर खान पि० नुरखान

Continued in जिला जेल ~~Jail~~ प्रथम श्रेणी जगदलपुर (बस्तर)

No. 340 dated 14-7-94 19

Forwarded to the ~~Deputy Commissioner~~ माननीय मुख्य न्यायिक दण्डाधिकारी जगदलपुर

to gather which a copy of judgement or order passed in the case for favour of trensemission to the proper Appellate Court, High Court Jabalpur.

Superintendent
Sub Jail, Kanker

Sub Jail Kanker

C.J.M. Court

Date of receipt in ~~Deputy Commissioner~~'s Office 21/7/94

Date of receipt of record to accompany Memo of Appeal of the Appeliate Court.

No. 28/94 dated 28/7/94 197

Forwarded to the Hd. Session Judge Jagdalpur

Deputy Commissioner
जगदलपुर

Date of receipt in Appeliate Court

P.T.O.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

(18)

मामला क्रमांक G.A. 1172/94 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

7-2-2006

Mr. C.R. Sahu, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Sachin Singh Rajput, Deputy Govt. Advocate for the State/respondent.

Oral judgment dictated on Dais.

Per L.C. Bhadoo, J: -

By this appeal, the appellant has questioned legality and correctness of judgment dated 12th July, 1994, passed by the Additional Sessions Judge, Kanker, in Sessions Trial No.298/92, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for committing the murder of his father Sukhram Gond & mother Ratai Bai @ Revati Bai, convicted him under Section 302 of the I.P.C. and sentenced to undergo imprisonment for life.

Case of the prosecution, in brief, is that in the night of 21-3-92 at about 9 p.m. accused/appellant Joharlal attacked his father Sukhram & mother Ratai Bai with a bamboo club on head and parietal region as a result of which blood started oozing out of the injuries. The matter was reported by Kotwar Mohan Ram in Police Station: Narharpur. Receiving this report, Head Constable Mohanlal Pandey left for village: Chawar, recorded the statement of witnesses, saw injured Sukhram, and his wife Ratai Bai informed that her husband asked the accused as to why he is not working on which the accused assaulted her and her husband with club. Dehati Nalishi

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

was recorded and based on that, the first information was recorded. On 23-3-92 at 10.30 p.m., Ratai Bai died and on 24-3-1992 at 5.45 a.m., Sukhram died in Kanker Hospital on which merg was recorded. On the memorandum of the accused, one bamboo club and one wooden club were taken into possession. Blood stained soil and plain soil were taken into possession from the place of occurrence. One red colour old sari, one old torn petticoat and one lungi were taken into possession.

After completion of investigation, charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate, Kanker, who in turn committed the case to the Sessions Judge, Jagdalpur, from where learned Additional Sessions Judge, Kanker, received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined 17 witnesses. Statement of the accused was recorded by learned Additional Sessions Judge under Section 313 of the Cr.P.C. in which he either pleaded innocence or denied the prosecution evidence and stated that he is innocent.

Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused convicted and sentenced the accused as mentioned in para 1 of this judgment.

We have heard Mr. C.R. Sahu, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. Sachin Singh Rajput, learned Deputy Govt. Advocate on behalf of the State/respondent.

Homicidal deaths of Sukhram & Ratai Bai are not in dispute.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

As far as involvement of the accused/appellant in the crime in question is concerned, Pati Ram (PW-1), who is uncle of the accused & brother of deceased Sukhram, has stated that on the fateful night he was sleeping in his house, Balram came to his house and informed that some one has murdered his brother on which he went to the house of his brother Sukhram and saw that Sukhram was lying on the ground and his wife was also lying on the ground. On enquiry from Ratai Bai, she disclosed that her son Joharlal has assaulted them. There was injury on the head of Ratai Bai and they took Ratai Bai & Sukhram to the hospital. The above evidence of oral dying declaration has been corroborated by Daya Ram (PW-2) who also went to the place of occurrence on hearing about the incident and to whom deceased Ratai Bai made same statement, which she made before Pati Ram (PW-1). Mohan Ram (PW-4), Arjun (PW-5) and Kalu Ram (PW-8) have also corroborated the evidence regarding dying declaration made by Ratai Bai before Pati Ram (PW-1) & Daya Ram (PW-2). The evidence of these witnesses inspires confidence for the reason that Pati Ram (PW-1) is brother of deceased Sukhram & uncle of the accused, and other witnesses are villagers. There was no reason before these witnesses to implicate the accused in a case involving the death of his mother and father. In cross-examination of these witnesses, defence has not been able to elicit any fact, which makes the evidence of these witnesses unreliable or untrustworthy. Apart from that, Daya Ram (PW-2) & Siya Ram (PW-3) have stated that on enquiry the accused made extra judicial confession before them that he had assaulted his father & mother.

Therefore, in view of the dying declaration made by Ratai Bai and extra judicial confession made by the accused before Daya Ram (PW-2) &

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 4 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Siya Ram (PW-3), involvement of the accused/appellant in committing the murder of his father Sukhram and mother Ratai Bai is established and we do not find any illegality and infirmity in the judgment of the trial Court.

Learned counsel for the appellant argued that from facts, it appears that the accused/appellant assaulted the deceased persons with club only and there was no intention of causing death of his father and mother. Moreover, the incident was of the night of 21st March, 1992 and Ratai Bai died on 23rd March, 1992 at 10.30 p.m. whereas Sukhram died on 24th March, 1992 at 5.45 a.m.

Having perused medical evidence, post-mortem report and evidence of eyewitnesses, we are not convinced by the argument advanced by learned counsel for the appellant. From the evidence, it has come that even the wooden plank was stuck in the head of Ratai Bai, which was removed by the doctor. Dr. G.S. Sahu (PW-7) has stated that he conducted post-mortem of Ratai Bai and found that there was a long incised stitched wound in the size of 9 x 1 cms. on frontal region and other injury was on left hand, parietal & frontal bones were found fractured and the fractured bone pierced into brain as a result of which bran was ruptured. Dr. S.K. Rajoriya (PW-10) has stated that on 24-3-92 he conducted post-mortem on the body of Sukhram and found that left parietal bone was fractured, subdural haemorrhage was present in parietal & occipital regions and the wound was stitched. Cause of death was excessive bleeding and head injury.

Therefore, the manner in which the accused assaulted both mother & father on vital organ of the body i.e. head, it is evident that the accused assaulted both of them with intention to cause death. In the circumstances,

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	we do not find any substance in the argument of learned counsel for the appellant. In the result, the appeal is devoid of merit, same is liable to be dismissed and it is hereby dismissed. Sd/- L.C. BHADOO Judge Sd/- DHIRENDRA MISHRA Judge	

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